

# NORTHERN TERRITORY OF AUSTRALIA

## PEARL OYSTER CULTURE INDUSTRY MANAGEMENT PLAN 1998

As in force at 13 November 2014

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**ENDNOTES**

# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 13 November 2014

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## PEARL OYSTER CULTURE INDUSTRY MANAGEMENT PLAN 1998

### Plan under the *Fisheries Act 1988*

#### Part 1 Preliminary

##### 1 Citation

This Plan may be cited as the *Pearl Oyster Culture Industry Management Plan 1998*.

##### 2 Application

This Plan applies to the managed fishery relating to:

- (a) the culturing and sale of pearls produced from wildstock, spat or hatchery produced pearl oysters from all species of bivalves of the genus *Pinctada* (pearl oysters); and
- (b) associated activities,

declared by notice in *Gazette* No. G28 of 17 July 1991 at page 2.

##### 3 Definitions

In this Plan, unless the contrary intention appears:

**allocation**, in relation to a licensee, means:

- (a) in relation to a pearl oyster fishing unit – the number of pearl oyster fishing units allocated in respect of his or her Pearl Oyster Fishery licence for a licensing year under regulation 122E of the *Fisheries Regulations 1992*; and
- (b) in relation to a pearl oyster hatchery unit – the number of pearl oyster hatchery units allocated to him or her under clause 13 for a licensing year.

**Committee** means the Northern Territory Pearl Industry Advisory Committee established under section 24 of the Act.

**half pearl** means the concretion formed on the inner surface of either valve of a pearl oyster as a result of a person adhering an object permanently to that surface.

**holding area** means an area, approved under regulation 181 of the *Fisheries Regulations*, at which, under a Pearl Oyster Culture Industry licence, pearl oysters taken from the wild or produced in a hatchery are held for seeding and related operations.

**licence** means a licence in respect of the Pearl Oyster Culture Industry.

**licensee** means the holder of a current Pearl Oyster Culture Industry licence.

**licensing year** means a calendar year.

**mother-of-pearl** means the smooth, shining, iridescent substance forming the inner layers of the shell of a pearl oyster.

**pearl** includes a whole, half, baroque, seedless or blister pearl from a pearl oyster, whether the pearl is natural or cultured.

**pearl farm lease** means a lease granted to a licensee under section 55 of the Act for the purposes of a Pearl Oyster Culture Industry licence.

**pearl oyster** means an oyster of the genus *Pinctada* and includes:

- (a) a part of a pearl oyster; and
- (b) the spat of a pearl oyster.

**Pearl Oyster Fishery** means the managed fishery relating to the taking and transporting from the wild of all species of bivalves of the genus *Pinctada* (pearl oysters).

**pearl oyster fishing unit** has the meaning it has in regulation 122D(2) of the *Fisheries Regulations 1992*.

**pearl oyster hatchery unit** has the meaning it has in clause 12(2).

**seed** means to implant a nucleus into a pearl oyster shell for the purpose of forming pearls.

**take** includes sever, remove, damage, destroy or otherwise displace a pearl oyster from its natural habitat, but does not include the taking of a pearl oyster from a pearl oyster dump site, holding area or an area of land held under a pearl farm lease.

## **Part 2 Rights and duties of licensee**

### **4 Hatchery development**

- (1) A licensee may farm, breed, culture or keep pearl oysters for sale or the purposes of aquaculture.
- (2) A licensee may operate a pearl oyster hatchery only in accordance with the terms, conditions, reservations and covenants (if any) specified in the licence and pearl farm lease under which the hatchery is operated.

### **5 Possession of pearl oysters by licensee**

A licensee is entitled to have possession of pearl oysters if:

- (a) they have been taken under and in accordance with a Pearl Oyster Fishery licence; or
- (b) they are held or have been obtained under and in accordance with a licence.

### **6 Where pearl oysters may be held**

A licensee may have possession of a pearl oyster only:

- (a) on the area in respect of which a pearl farm lease has been granted to the licensee;
- (b) at an approved holding area;
- (c) on a vessel registered for operation in the Pearl Oyster Culture Industry;
- (d) at a place approved by the Director for holding pearl oysters; and
- (e) in transit between any 2 of those places.

### **7 Sale of pearl oysters**

A licensee may sell:

- (a) subject to clause 8, pearl oysters to the holder of a licence;
- (b) pearl oyster spat, but only to the holder of a licence;
- (c) pearl oyster shell for their mother-of-pearl content;
- (d) the flesh of pearl oysters, as pearl meat;

- (e) pearl oysters to a person if the oysters are for export from the Territory to a State or another Territory of the Commonwealth; and
- (f) pearls.

## **8 Transfer of pearl oysters**

- (1) A licensee may only transfer pearl oysters in accordance with this Plan and the licence.
- (2) A licensee may only transfer pearl oysters:
  - (a) to another licensee;
  - (b) in units of 1,000; and
  - (c) if, before the transfer takes place, the Director approves the transfer from the proposed transferor and the transfer to the proposed transferee.
- (3) A licensee may apply to the Director, in the approved form, to transfer a pearl oyster to a specified transferee.
- (4) The Director may, after considering an application under subclause (3), grant or refuse to grant the approval.
- (5) Subclause (2)(b) and (c) do not apply in relation to pearl oyster spat.

## **9 Spat collection**

- (1) A licensee may:
  - (a) collect pearl oyster spat within the boundaries of a pearl farm lease held by the licensee; and
  - (b) take pearl oyster spat from waters relevant to the Territory and outside the boundaries of a pearl farm lease held by the licensee, if the licensee holds a permit granted by the Director.
- (2) The Director must, on receipt of an application for a permit for the purposes of subclause (1)(b), refer the matter to the Committee.
- (3) The Committee must consider an application referred to it under subclause (2) and advise the Director of the Committee's opinion in respect of it.
- (4) The Director must, after considering the opinion of the Committee, grant or refuse to grant the permit sought.

- (5) In this clause, **waters relevant to the Territory** means coastal waters and waters of the Australian fishing zone that lie within the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* (Cth), as in force immediately before its repeal, under the heading "Area that includes the Adjacent Area in respect of the Northern Territory".

#### **10 Licensee must permit inspection of pearl oysters**

It is a condition of a licence that the licensee must permit the inspection by a person authorised in writing by the Director of all pearl oysters in the possession of the licensee.

### **Part 3 Seeding of pearl oysters**

#### **11 Number of pearl oysters that may be seeded**

- (1) A licensee must not, in each licensing year, seed pearl oysters other than:
- (a) a surviving pearl oyster seeded in accordance with the licence in previous licensing years; and
  - (b) the number of pearl oysters represented by:
    - (i) the allocation of pearl oyster fishing units under his or her Pearl Oyster Fishery licence for the licensing year;
    - (ii) the number of pearl oyster fishing units, if any, permanently transferred to him or her under the *Fisheries Regulations 1992* during the licensing year; and
    - (iii) the number of pearl oyster fishing units, if any, temporarily transferred to him or her under the *Fisheries Regulations* under a transfer that is in force in the licensing year,

less the number of pearl oysters represented by the number of pearl oyster fishing units:

- (iv) permanently transferred by him or her to another person under the *Fisheries Regulations 1992* during the licensing year; or
- (v) temporarily transferred by him or her to another person under the *Fisheries Regulations 1992* under a transfer that is in force in the licensing year; and

- (c) the number of pearl oysters represented by:
  - (i) the allocation of pearl oyster hatchery units under his or her licence for the licensing year;
  - (ii) the number of pearl oyster hatchery units, if any, permanently transferred him or her under the *Fisheries Regulations 1992* during the licensing year; and
  - (iii) the number of pearl oyster hatchery units, if any, temporarily transferred to him or her under the *Fisheries Regulations 1992* under a transfer that is in force in the licensing year,

less the number of pearl oysters represented by the number of pearl oyster hatchery units:

- (iv) permanently transferred by him or her to another person under the *Fisheries Regulations 1992* during the licensing year; or
  - (v) temporarily transferred by him or her to another person under the *Fisheries Regulations 1992* under a transfer that is in force in the licensing year; and
- (d) a pearl oyster, seeded under a licence, transferred to the licensee in accordance with clause 8; and
- (e) a pearl oyster imported into the Territory in accordance with a permit issued by the Director to the licensee; and
- (f) the number of pearl oysters determined by the Minister by *Gazette* notice to be pearl oysters that may be used for training purposes by the licensee for the licensing year.

(2) A licensee may only seed under subclause (1)(b):

- (a) pearl oysters, other than pearl oyster spat, taken under a Pearl Oyster Fishery licence during the licensing year or a previous licensing year; or
- (b) adult oysters propagated from pearl oyster spat:
  - (i) produced in a hatchery operating under a licence; or
  - (ii) taken from the wild under a permit issued under clause 9.



- (3) A licensee may only seed under subclause (1)(c):
  - (a) pearl oysters, other than pearl oysters taken as spat, taken under a Pearl Oyster Fishery licence during the licensing year or a previous licensing year; or
  - (b) adult oysters propagated from pearl oyster spat produced in a hatchery operating under a licence.
- (4) A licensee may only seed in accordance with regulation 122D(2)(b) and (c) of the *Fisheries Regulations 1992* adult pearl oysters propagated from spat produced in a hatchery if he or she has notified the Director in writing of the number of such pearl oysters he or she intends to seed in accordance with that regulation.

## **12 Pearl oyster hatchery units**

- (1) The maximum number of pearl oyster hatchery units is 300.
- (2) A pearl oyster hatchery unit for a licensing year represents the right to seed the number of oysters determined by the Minister by *Gazette* notice for the licensing year.
- (3) In making the determination, the Minister must have regard to:
  - (a) the average seeding rejection rate; and
  - (b) any other matters the Minister considers appropriate.
- (4) For subclause (3)(a), the average seeding rejection rate is the average rate of the rejection of nuclei implanted in oysters that is:
  - (a) recommended by the Northern Territory Pearling Industry Advisory Committee; and
  - (b) accepted by the Director.

## **13 Allocation of pearl oyster hatchery units**

Subject to this Part, the Director must, on the renewal of a licence, allocate to the licensee a number of pearl oyster hatchery units for the year for which the licence is renewed, being comprised of:

- (a) the licensee's allocation of pearl oyster hatchery units for the previous licensing year; and
- (b) the number of pearl oyster hatchery units permanently transferred to the licensee under Part 4 during the previous licensing year,

less the number of pearl oyster hatchery units, if any, that the licensee has permanently transferred to another person under Part 4 during the previous licensing year.

## **Part 4                    Transfer of pearly oyster hatchery units**

### **14                    Transfer only permitted under this plan**

A pearl oyster hatchery unit is not transferable except under and in accordance with this Plan.

### **15                    Application for transfer**

- (1) A licensee may apply to the Director in the approved form to:
  - (a) temporarily or permanently transfer a pearl oyster hatchery unit to a Pearl Oyster Culture Industry licensee; or
  - (b) permanently transfer a pearl oyster hatchery unit to an applicant for, or a person who intends to apply for, a Pearl Oyster Culture Industry licence.
- (2) A Pearl Oyster Culture Industry licensee must not, during a licensing year, apply under subclause (1) to transfer a pearl oyster hatchery unit to a person if, were the transfer to be approved, the number of pearl oysters that may be seeded during the licensing year by the licensee in accordance with clause 11(1)(c) would be less than the number of pearl oysters seeded by the licensee during the licensing year.

### **16                    Director to approve or refuse application for transfer**

- (1) The Director must approve or refuse to approve an application received under clause 15.
- (2) The Director must notify the applicant in writing of the Director's decision under subclause (1).

### **17                    Commencement and duration of transfer**

- (1) Where the Director approves an application under clause 15(1)(a) for the transfer of a pearl oyster hatchery unit to a licensee, the transfer takes effect on the day specified in the transfer.
- (2) Where the Director approves an application under clause 15(1)(b) for the permanent transfer of a pearl oyster hatchery unit to an applicant for, or a person who intends to apply for, a Pearl Oyster Culture Industry licence, the transfer takes effect on the grant of the licence to the person.

- (3) A temporary transfer of a pearl oyster hatchery unit remains in force only until the expiration of 30 June of the licensing year specified in the transfer to be the last year for which the transfer remains in force.

**18 Where units transferred to applicant for licence**

Where the Director approves an application under clause 15(1)(b) for the transfer of one or more pearl oyster hatchery units to an applicant for, or a person who intends to apply for, a licence, the Director must:

- (a) specify on the transferor's licence the number of pearl oyster hatchery units to be transferred from the licensee on the grant of the licence to the person; and
- (b) specify on the Pearl Oyster Culture Industry licence granted to the person the number of pearl oyster hatchery units permanently transferred to him or her on the grant of the licence.

**Part 5 Repeal and transitional matters for Regulations No. 27 of 1998**

**19 Repeal and transitional**

- (1) The Pearl Oyster Culture Industry Management Plan as in force immediately before the commencement day is repealed.
- (2) A person who, by virtue of the amendments of the *Fisheries Regulations 1992* that commenced on the commencement day is to be taken to hold a Pearl Oyster Culture Industry licence, is, on and after the commencement day, to be taken to have been allocated under clause 13 of this Plan for the licensing year in which this Plan commences, 60 pearl oyster hatchery units.
- (3) In this clause, **commencement day** means the day on which this Plan commences.

**Part 6 Transitional matters for Pearl Oyster Culture Industry Management Plan Amendment 2006**

**20 Application of amendment**

The amendment to this Plan by clause 3 of the *Pearl Oyster Culture Industry Management Plan Amendment 2006* applies only in relation to a licensing year that starts on or after 1 January 2007.

**21 Licensing year**

The period from 1 July 2006 to 31 December 2006 is taken to be a licensing year for a licensee for this Plan.

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**ENDNOTES**
**1****KEY**

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

**2****LIST OF LEGISLATION*****Pearl Oyster Culture Industry Management Plan (SL No. 27, 1998)***

Notified	15 July 1998
Commenced	15 July 1998

***Pearl Oyster Culture Industry Management Plan Amendment 2006 (SL No. 22, 2006)***

Notified	30 June 2006
Commenced	30 June 2006

***Statute Law Revision Act 2014 (Act No. 38, 2014)***

Assent date	13 November 2014
Commenced	13 November 2014

**3****GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 3, 11, and 19.

**4****LIST OF AMENDMENTS**

cl 3	amd No. 22, 2006, cl 3
cl 9	amd Act No. 38, 2014, s 2
cl 11	amd No. 22, 2006, cl 4
cl 12	amd No. 22, 2006, cl 5
pt 5 hdg	ins No. 22, 2006, cl 6
pt 6 hdg	ins No. 22, 2006, cl 7
cl 20 – 21	ins No. 22, 2006, cl 7